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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

Federal Communications Commission  
Office of the Secretary

In re

Seller Financing of Broadcast  
Station Transfers

)  
)  
) File No. MMB-870921A  
)

**COMMENTS OF THE WIRELESS CABLE ASSOCIATION, INC.**

The Wireless Cable Association, Inc. ("WCA"), by its attorneys, hereby submits its comments in response to the Motion for Declaratory Ruling filed by Crowell & Moring on September 21, 1987 (the "Motion").<sup>1</sup>

The Motion urges the Commission to clarify the meaning of Section 73.1150(a) of the Commission's Rules, which provides that:

In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.

The Motion accurately traces the obscure history of this provision and how it has illogically come to stand for the proposition that a seller/financer cannot retain the right to reacquire the station on default, even where that reacquisition is expressly made subject to prior Commission approval. To eliminate the cloud of impermissibility that today prevents a seller/financer of a Part 73 facility from retaining the right to become the licensee upon default by the buyer/borrower (even if that right is subject to prior Commission approval), the Motion urges the Commission to define the phrase "right of reversion in the license" to mean "the right,

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<sup>1</sup>On March 15, 1991, the Commission released a Public Notice soliciting public comment on the Motion. These comments are submitted in response to that invitation.

whether or not contingent, to reacquire the license without prior Commission approval."

Being the trade association of the wireless cable industry, neither WCA nor its members have any direct interest in Section 73.1150(a); that provision is inapplicable on its face to the Multipoint Distribution Service ("MDS"), Instructional Television Fixed Service and Private Operational Fixed Microwave Radio Service stations that are utilized by wireless cable operators to transmit programming to subscribers. However, the Motion does raise an issue of vital importance to the wireless cable industry. Employing language virtually identical to that of Section 73.1150(a), Section 21.38 of the Commission's Rules bars any MDS licensee from transferring its station where it retains "a right or reversion or reassignment of the license."<sup>2</sup>

Thus, like broadcasters, MDS licensees are frustrated from engaging in seller financing; Section 21.38 apparently bars a MDS seller/financer from retaining as security the right to reacquire the station in the case of default by the buyer/borrower, even if that right is made subject to prior Commission approval. Without denigrating the importance of seller financing to the broadcast industry, WCA respectfully submits that is at least as important that Section 21.38 of the Commission's Rules be clarified in this proceeding so as to permit MDS licensees to engage in seller financing.

Unlike the case with respect to the broadcast industry, the wireless cable industry generally has been shunned by banks and other traditional sources of media financing. Due to a confluence of circumstances (including difficulties securing access to programming on

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<sup>2</sup>47 C.F.R. § 21.38 (1990).

equitable terms, a convoluted Commission licensing system and inappropriate efforts by local authorities to preserve the monopoly of franchise fee paying coaxial cable companies), wireless cable operators historically have had to resort to non-traditional financing sources. Unfortunately, one of the most likely sources of such financing, seller financing, has been foreclosed as a result of Section 21.38.

The need for seller financing in the MDS has never been as acute as it is today. Until recently, a wireless cable operator was banned from being the licensee for both multichannel MDS ("MMDS") channel groups in its market. In its October 26, 1990 *Report and Order* in General Docket No. 90-54, the Commission recognized that its MMDS "one-to-a-market" rule was frustrating the development of wireless cable by imposing undue costs of system operators, and repealed the rule.<sup>3</sup> While wireless cable operators are now free to acquire the licenses for the both MMDS channel groups and thereby reduce their operating expenses, a lack of financing has prevented most operators from taking advantage of this new opportunity. Were MMDS licensees permitted to engage in seller financing, there likely would be an increase in the number of wireless cable operators able to purchase the MMDS facilities in their markets.

The history of Section 21.38 provides no explanation whatsoever as to why the Commission has banned MDS licensees from selling their facilities, financing the transaction

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<sup>3</sup>See *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410, 6411-12 (1990).

and retaining a right to reacquire the station in the event of a default, subject to prior Commission approval. Clearly, the Commission does not object when the buyer of a MDS licensee grants to a lender (other than a seller/financer) the right to acquire the MDS license upon a loan default, so long as that right is contingent upon the prior receipt of Commission approval; just two years ago the Commission amended Section 21.38 of its Rules to simplify the granting of such rights to lenders.<sup>4</sup> While the language restricting seller financing was adopted by the Commission in its 1987 *Report and Order* in CC Docket No. 86-128, neither that *Report and Order* nor the *Notice of Proposed Rulemaking* that led up to it include any discussion whatsoever of why seller/financers should be barred from retaining the right to reacquire their facilities upon Commission consent in the event of a loan default.<sup>5</sup> One can only assume that the Commission's intent was to create a mirror image of Section 73.1150(a) for regulating MDS and other Part 21 licensees.

Whatever the initial rationale behind these rules, it should be evident that to bar the financing arrangements that are the subject of the Motion does not serve the public interest. To interpret both Section 73.1150 and Section 21.38 so as to permit a seller/financer to retain the right, subject to prior Commission approval, to reacquire its facility in the event of a loan default contravenes no legitimate Commission interest. As is detailed in the Motion, Section 73.1150 is grounded in dual concerns that a non-licensee (the seller/financer) will exercise undue control over the station and that automatic assignments are impermissible under Section

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<sup>4</sup>See *Revision of Part 21 of The Commission's Rules*, 4 FCC Rcd 2287 (1989).

<sup>5</sup>See *Revision of Part 21 of The Commission's Rules*, 2 FCC Rcd 5713, 5735-36 (1987).


310 of the Communications Act of 1934. Yet, neither of these concerns is present when the financing arrangements at issue here are employed. Under such financing arrangements, the seller/financer will have no right to exercise any control whatsoever over the station. Nor will the seller/financer have an absolute right to reacquire the station; the Commission will have the ultimate say as to whether the seller is qualified to serve again as a licensee before any assignment can be consummated.

In conclusion, if the Commission is to interpret Section 73.1150(a) as suggested in the Motion -- and it certainly should -- it should also make clear that Section 21.38 is similarly interpreted so as to permit a MDS licensee that engages in seller financing to retain the right to reacquire the license in the event of default, subject to prior Commission consent.<sup>6</sup>

Respectfully submitted,

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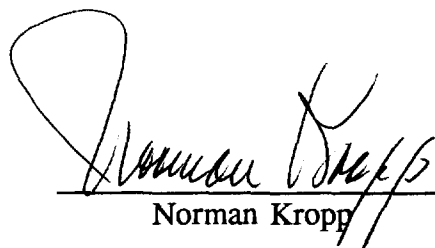
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<sup>6</sup>In the alternative, WCA supports the expedited issuance of a notice of proposed rulemaking, should the Commission determine that a rulemaking is necessary to provide the relief WCA seeks.

## CERTIFICATE OF SERVICE

I, Norman Kropp, hereby certify that the foregoing "Comments of The Wireless Cable Association, Inc." was served this 22nd day of April, 1991 by depositing a true copy thereof, first class postage prepaid, with the United States Postal Service addressed to:

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Norman Kropp